

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 36417

STATE OF IDAHO,)	2010 Unpublished Opinion No. 363
)	
Plaintiff-Respondent,)	Filed: February 26, 2010
)	
v.)	Stephen W. Kenyon, Clerk
)	
ROGER A. LABRIE,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Twin Falls County. Hon. G. Richard Bevan, District Judge.

Order revoking probation and ordering into execution previously imposed sentence, affirmed; order denying I.C.R. 35 motion for reduction of sentence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Diane M. Walker, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Jessica M. Lorello, Deputy Attorney General, Boise, for respondent.

Before LANSING, Chief Judge, GUTIERREZ, Judge
and GRATTON, Judge

PER CURIAM

Roger A. Labrie was charged with possession of sexually exploitative material and pursuant to a plea agreement, pled guilty to the charge. The district court sentenced Labrie to a unified term of five years, with one year determinate, suspended the sentence and placed Labrie on probation for five years. Labrie subsequently violated the terms of his probation and after an evaluation was completed, the district court ordered Labrie committed to the Department of Health and Welfare. After Labrie was released from the Department of Health and Welfare, the State requested another evaluation and Labrie was again committed to the Department of Health and Welfare. After his release from the second commitment, Labrie was found to be competent

to proceed in the charges pending against him. The district court revoked Labrie's probation, suspended the sentence and again placed him on probation for three years. Labrie again violated the terms of his probation and, after an evidentiary hearing, the district court revoked Labrie's probation and ordered the previously imposed sentence into execution. Labrie filed an Idaho Criminal Rule 35 motion for reduction of sentence, which the district court denied. Labrie appeals from the revocation of his probation and from the denial of his Rule 35 motion, contending that the district court abused its discretion by revoking his probation and by failing to reduce his sentence *sua sponte*.

It is within the trial court's discretion to revoke probation if any of the terms and conditions of the probation have been violated. I.C. §§ 19-2603, 20-222; *State v. Beckett*, 122 Idaho 324, 326, 834 P.2d 326, 328 (Ct. App. 1992); *State v. Adams*, 115 Idaho 1053, 1054, 772 P.2d 260, 261 (Ct. App. 1989); *State v. Hass*, 114 Idaho 554, 558, 758 P.2d 713, 717 (Ct. App. 1988). In determining whether to revoke probation, a court must examine whether the probation is achieving the goal of rehabilitation and consistent with the protection of society. *State v. Upton*, 127 Idaho 274, 275, 899 P.2d 984, 985 (Ct. App. 1995); *Beckett*, 122 Idaho at 325, 834 P.2d at 327; *Hass*, 114 Idaho at 558, 758 P.2d at 717. The court may, after a probation violation has been established, order that the suspended sentence be executed or, in the alternative, the court is authorized under Idaho Criminal Rule 35 to reduce the sentence. *Beckett*, 122 Idaho at 326, 834 P.2d at 328; *State v. Marks*, 116 Idaho 976, 977, 783 P.2d 315, 316 (Ct. App. 1989). A decision to revoke probation will be disturbed on appeal only upon a showing that the trial court abused its discretion. *Beckett*, 122 Idaho at 326, 834 P.2d at 328.

A Rule 35 motion is a request for leniency which is addressed to the sound discretion of the sentencing court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006); *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007).

Applying the foregoing standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion either in revoking probation or in failing to reduce the sentence. Therefore, the order revoking probation and directing execution of Labrie's

previously suspended sentence, as well as the order denying Labrie's Rule 35 motion are affirmed.